

SUBCHAPTER G—CONTRACT MANAGEMENT

PART 442—CONTRACT ADMINISTRATION

Subpart 442.1—Interagency Contract Administration and Audit Services

Sec.

442.102 Procedures.

Subpart 442.7—Indirect Cost Rates

442.704 Billing rates.

AUTHORITY: 5 U.S.C. 301 and 40 U.S.C. 486(c).

Subpart 442.1—Interagency Contract Administration and Audit Services

442.102 Procedures.

(a) The Office of the Inspector General (OIG), Audit Division, has established a cross-servicing arrangement with the Defense Contract Audit Agency (DCAA) to provide contract audit services required by the FAR.

(b) All contract audit services required by contracting officers shall be coordinated through the cognizant OIG Regional Inspector General—Auditing (RIG-A). Cognizance is determined on the basis of the contractor's location. The OIG will, at its discretion, perform the audit with OIG personnel or refer the request to the DCAA if such would be more practical due to workload considerations or the location of the contractor. There is no charge for audit services coordinated through OIG.

(c) In order to ensure compliance with this requirement and to evaluate the results of audits, contracting officers shall forward to the RIG-A copies of all price negotiation memoranda prepared for contracts and contract modifications in excess of \$500,000.

[49 FR 12129, Mar. 28, 1984, and 50 FR 14197, Apr. 10, 1985]

Subpart 442.7—Indirect Cost Rates

442.704 Billing rates.

The contracting officer shall insert a clause substantially the same as the clause at 452.242–70, Estimated and Al-

lowable Costs, in cost-plus-fixed-fee contracts. The clause with its Alternate I is for use in cost (no-fee) contracts. The clause with its Alternate II is for use in cost-plus-incentive-fee contracts. The clause with its Alternate III is for use in cost-plus-award-fee contracts.

[53 FR 6069, Feb. 29, 1988]

PARTS 443–444—[RESERVED]

PART 445—GOVERNMENT PROPERTY

Subpart 445.1—General

Sec.

445.106 Government property clauses.

Subpart 445.3—Providing Government Property to Contractors

445.302 Providing facilities.

445.302–1 Policy.

445.302–7 Optional property-related clauses for facilities contracts.

Subpart 445.4—Contractor Use and Rental of Government Property

445.403 Rental—Use and Charges Clause.

445.407 Non-Government use of plant equipment.

Subpart 445.6—Reporting, Redistribution and Disposal of Contractor Inventory

445.608 Screening of contractor inventory.

445.608–6 Waiver of screening requirements.

AUTHORITY: 5 U.S.C. 301 and 40 U.S.C. 486(c).

SOURCE: 49 FR 12129, Mar. 28, 1984, unless otherwise noted.

Subpart 445.1—General

445.106 Government property clauses.

The contracting officer shall insert the clause at 452.245–70, Government-Furnished Property, in contracts in which Government property is furnished to the contractor.

[53 FR 6069, Feb. 29, 1988]

Subpart 445.3—Providing Government Property to Contractors

445.302 Providing facilities.

445.302-1 Policy.

HCA's are authorized to make determinations for providing facilities to a contractor as prescribed in FAR 45.302-1(a)(4).

445.302-7 Optional property-related clauses for facilities contracts.

The contracting officer shall insert a clause substantially the same as the clause at 452.245-71, Government Property-Facilities Use, in contracts to authorize the contractor to use specified Government-owned facilities.

[53 FR 6069, Feb. 29, 1988]

Subpart 445.4—Contractor Use and Rental of Government Property

445.403 Rental—Use and Charges clause.

HCA's are authorized to make determinations for charging rent on the basis of use under the Use and Charges clause in FAR 52.245-9 as prescribed in FAR 45.403(a).

445.407 Non-Government use of plant equipment.

Requests for non-Government use of plant equipment as prescribed in FAR 45.407 shall be submitted by the HCA to the Director, Office of Operations, for approval.

Subpart 445.6—Reporting, Redistribution and Disposal of Contractor Inventory

445.608 Screening of contractor inventory.

445.608-6 Waiver of screening requirements.

Requests to waive screening requirements as prescribed in FAR 45.608-6 shall be submitted by the HCA to the Director, Office of Operations, for approval.

PART 446—QUALITY ASSURANCE

Subpart 446.3—Contract Clauses

Sec.

446.370 Inspection and acceptance.

Subpart 446.6—Material Inspection and Receiving Reports

446.601 Inspection and receiving.

446.602 Acceptance.

446.603 Inspection, acceptance, and receiving certification.

446.604 Distribution of material inspection and receiving reports.

Subpart 446.7—Warranties

446.704 Authority for use of warranties.

446.708 Warranties of data.

AUTHORITY: 5 U.S.C. 301 and 40 U.S.C. 486(c).

SOURCE: 49 FR 12129, Mar. 28, 1984, unless otherwise noted.

Subpart 446.3—Contract Clauses

446.370 Inspection and acceptance.

The contracting officer shall insert a clause substantially the same as the clause at 452.246-70, Inspection and Acceptance, in contracts where inspection and acceptance will be performed at the same location. The clause with its Alternate I is for use when inspection and acceptance will be performed at different locations.

[53 FR 6069, Feb. 29, 1988]

Subpart 446.6—Material Inspection and Receiving Reports

446.601 Inspection and receiving.

(a) The certification stated in 446.603 shall be inserted on each commercial shipping document or packing list for supplies or services and shall be signed by the authorized Government representative as required by FAR 46.401(f), except for small purchases (see FAR 46.404).

(b) Form AD-838, Purchase Order, shall be used to comply with the requirements of FAR 46.406(f) and FAR 46.404.

(c) The certification required by 446.601(a) shall be made at the place or

places specified in the contract for performance of Government quality assurance as required by FAR 46.401(b) and as prescribed in FAR 46.402 or FAR 46.403, as appropriate.

446.602 Acceptance.

(a) The certification stated in 446.603 shall be inserted on each commercial shipping document or packing list for supplies or services and signed by the authorized Government representative as required by FAR 46.501.

(b) The certification required by 446.602(a) shall be made at the place or places specified in the contract for Government acceptance as required by FAR 46.503.

(c) If the contracting officer elects to use a contractor's certificate of conformance as allowed by FAR 46.315 under the conditions prescribed by FAR 46.504, the certificate may be used as the basis for Government acceptance.

(d) Form AD-838, Purchase Order, shall be used to comply with the requirements of FAR 46.501.

446.603 Inspection, acceptance and receiving certification.

As prescribed in this subpart, the following certification shall be inserted on commercial shipping documents or packing lists for supplies or services:

INSPECTION, ACCEPTANCE AND RECEIVING CERTIFICATION

The listed items or services have been:
 _____ inspected, _____ accepted, _____ received by me or under my supervision and they conform to contract except as noted below or on attached documents.

Date _____
 (Signature) _____

(Typed name of authorized
Government representative)

446.604 Distribution of material inspection and receiving reports.

Distribution of material inspection and receiving reports shall be made in accordance with established procedures established by contracting activities.

Subpart 446.7—Warranties

446.704 Authority for use of warranties.

(a) The requisitioning unit is responsible for preparing a written recommendation to identify those acquisitions deemed appropriate for application of warranty provisions. The recommendation shall address the criteria set forth at FAR 46.703 to document the basis on which a warranty is considered appropriate. The recommendation shall also identify the specific parts, subassemblies, assemblies, systems, or contract line items to which a warranty should apply.

(b) Before soliciting the requirement, the contracting officer shall make a written determination, subject to approval at a level above the contracting officer, whether to include a warranty contract clause.

[50 FR 14200, Apr. 10, 1985]

446.708 Warranties of data.

Warranties of data shall be developed and used only after review and approval by OGC.

PART 447—TRANSPORTATION

Subpart 447.3—Transportation in Supply Contracts

Sec.

447.302 Place of delivery—F.O.B. point.

447.305-10 Packing, marking, and consignment instructions.

AUTHORITY: 5 U.S.C. 30 and 40 U.S.C. 486(c).

Subpart 447.3—Transportation in Supply Contracts

447.302 Place of delivery—F.O.B. point.

The contracting officer shall insert a clause substantially the same as the clause at 452.247-70, Delivery Location, in supply contracts when it is necessary to specify delivery locations. If appropriate, the clause may reference an attachment which lists various delivery locations and any other delivery

Department of Agriculture

449.111

details (e.g., quantities to be delivered to each location, etc).

[53 FR 6069, Feb. 29, 1988]

447.305-10 Packing, marking, and consignment instructions.

(a) The contracting officer shall insert a clause substantially the same as the clause at 452.247-71, Marking Deliverables, in solicitations and contracts if special markings on deliverables (other than reports) are required.

(b) The contracting officer shall insert the clause at 452.247-72, Packing for Domestic Shipment, in contracts when item(s) will be delivered to a continental destination for immediate use, when the material specification or purchase description does not provide preservation, packaging, packing and/or marking requirements and/or when the requiring activity has not cited a specific specification for packaging.

(c) The contracting officer shall insert the clause at 452.247-73, Packing for Overseas Shipment, in contracts when item(s) will be delivered to an overseas destination for immediate use, the material specification does not specify packing levels and the required activity has not specified such requirements.

[53 FR 6069, Feb. 29, 1988]

PART 448—VALUE ENGINEERING

AUTHORITY: 5 U.S.C. 301 and 40 U.S.C. 486(c).

Subpart 448.1—Policies and Procedures

448.102 Policies.

(a) USDA is exempt from the requirements of FAR Part 48, Value Engineering.

(b) HCA's are encouraged to implement value engineering programs in their contracting activities in accordance with FAR Part 48 when it has been determined by the HCA that such implementation is in the best interest of the Government.

[49 FR 12130, Mar. 28, 1984, and 50 FR 14197, Apr. 10, 1985]

PART 449—TERMINATION OF CONTRACTS

Subpart 449.1—General Principles

Sec.

449.106 Fraud or other criminal conduct.

449.107 Audit of prime contract settlement proposals and subcontract settlements.

449.111 Review of proposed settlements.

Subpart 449.4—Termination for Default

449.402 Termination of fixed-price contracts for default.

449.402-3 Procedure for default.

AUTHORITY: 5 U.S.C. 301 and 40 U.S.C. 486(c).

SOURCE: 49 FR 12130, Mar. 28, 1984, unless otherwise noted.

Subpart 449.1—General Principles

449.106 Fraud or other criminal conduct.

(a) Whenever fraud, such as falsified documents, false statements, or other criminal conduct related to the settlement of a terminated contract is suspected, the contracting officer shall discontinue negotiations and prepare a report of the facts. The report shall be submitted by the HCA to the Inspector General along with copies of documents or other information connected with the suspected violation(s). Concurrently, a copy of the report shall also be submitted to the Director, Office of Operations.

(b) Depending of the findings of the Inspector General, the HCA may initiate suspension of debarment action as prescribed in FAR Part 9.4 and Part 490.4 of this chapter.

449.107 Audit of prime contract settlement proposals and subcontract settlements.

Prime contractor settlement proposals and subcontract settlements requiring audit review in accordance with FAR 49.107 shall be referred to the Inspector General.

449.111 Review of proposed settlements.

All proposed settlement agreements shall be reviewed and approved at a level above the contracting officer in accordance with contracting activity

449.402-3

procedures. Settlement agreements of \$50,000 or more shall be approved by the HCA.

Subpart 449.4—Termination for Default

449.402 Termination of fixed-price contracts for default.

449.402-3 Procedure for default.

(a) In addition to the requirements of FAR 49.402-3(g), the notice of termination shall contain instructions regarding the disposition of any Government property in the possession of the contractor (see FAR 45.508-1) and, in the case of construction contracts, such materials, appliances, and structures as may be on the site of the construction work. The notice shall also contain a statement concerning the liability of the contractor or its surety for any liquidated damages (see FAR 49.402-7).

(b) The notice of termination suggested under FAR 49.601-2 shall be modified in accordance with (a) above.

PART 450—EXTRAORDINARY CONTRACTUAL ACTIONS

Sec.

450.001 Definitions.

Subpart 450.1—General

450.103 Deviations.

450.104 Reports.

48 CFR Ch. 4 (10-1-96 Edition)

Subpart 450.2—Delegation of and Limitations on Exercise of Authority

450.201 Delegation of authority.

AUTHORITY: 5 U.S.C. 301 and 40 U.S.C. 486(c).

SOURCE: 49 FR 12130, Mar. 28, 1984, unless otherwise noted.

450.001 Definitions.

Approving authority, as used in this part, means the Assistant Secretary for Administration.

Subpart 450.1—General

450.103 Deviations.

Requests for deviations to FAR Part 50 shall be submitted by the HCA to the Director, Office of Operations, for approval.

450.104 Reports.

The Director, Office of Operations, shall prepare the report required by FAR 50.104.

Subpart 450.2—Delegation of and Limitations on Exercise of Authority

450.201 Delegation of authority.

The Assistant Secretary for Administration is authorized to approve all actions under FAR Part 50 except indemnification actions listed in FAR 50.201(d).

PART 451—[RESERVED]

SUBCHAPTER H—CLAUSES AND FORMS

PART 452—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

Subpart 452.2—Texts of Provisions and Clauses

Sec.

- 452.204-70 Data Universal Numbering System (DUNS).
- 452.204-71 Inquiries.
- 452.207-70 Definition of "Right of First Refusal".
- 452.207-71 Report of Employment Under Commercial Activities.
- 452.209-70 Organizational Conflict of Interest.
- 452.210-70 Brand Name or Equal.
- 452.210-71 Statement of Work/Specifications.
- 452.210-72 Attachments to Statement of Work/Specifications.
- 452.212-70 Level of Effort—Cost-Reimbursement Term Contract.
- 452.212-71 Task Orders.
- 452.212-72 Period of Performance.
- 452.212-73 Effective Period of the Contract.
- 452.214-70 Award by Lot.
- 452.215-71 Instructions for the Preparation of Technical and Business Proposals.
- 452.215-72 Amendments to Proposals.
- 452.215-73 Submission of Proposals.
- 452.215-74 General Financial and Organizational Information.
- 452.215-75 Definition of Labor Classifications.
- 452.215-77 Post-Award Conference.
- 452.216-70 Award Fee.
- 452.216-71 Base Fee and Award Fee Proposal.
- 452.216-72 Evaluation Quantities—Indefinite-Delivery Contract.
- 452.216-73 Minimum and Maximum Contract Amounts.
- 452.216-74 Ceiling Price.
- 452.216-75 Letter Contract.
- 452.217-70 Option to Extend the Term of the Contract—Cost-Plus-Fixed-Fee Contract.
- 452.217-71 Option to Extend the Term of the Contract—Cost-No-Fee Contract.
- 452.217-72 Option to Extend the Term of the Contract—Cost-Plus-Award-Fee Contract.
- 452.217-73 Option for Increased Quantity—Cost-Plus-Fixed-Fee Contract.
- 452.217-74 Option for Increased Quantity—Cost-No-Fee Contract.
- 452.217-75 Option for Increased Quantity—Cost-Plus-Award-Fee Contract.
- 452.217-76 Option to Extend the Effective Period of the Contract—Time-and-Materials or Labor-Hour Contract.
- 452.217-77 Option to Extend the Effective Period of the Contract—Indefinite-Delivery/Indefinite-Quantity Contract.
- 452.217-78 Option to Extend the Term of the Contract—Fixed-Price Contract.
- 452.217-79 Option for Increased Quantity—Fixed-Price Contract.
- 452.219-70 Set-Aside/Size Standard Information.
- 452.222-70 Service Contract Act of 1965—Contracts of \$2,500 or less.
- 452.222-71 Service Contract Act of 1965.
- 452.222-72 Statement of Equivalent Rates for Federal Hires.
- 452.222-73 Fair Labor Standards Act and Service Contract Act—Price Adjustment.
- 452.224-70 Confidentiality of Information.
- 452.225-70 English Language and U.S. Currency Requirements.
- 452.228-70 Notice of Required Bid Guarantee.
- 452.228-71 Notice of Required Performance Security.
- 452.228-72 Notice of Required Payment Security.
- 452.228-73 Insurance Coverage.
- 452.232-70—452.232-73 [Reserved]
- 452.232-74 Reimbursement for Bond Premiums—Fixed-Price Construction Contracts.
- 452.236-70 Additive or Deductive Items.
- 452.236-71 Prohibition Against the use of Lead-Based Paint.
- 452.236-72 Use of Premises.
- 452.236-73 Archeological or Historic Sites.
- 452.236-74 Control or Erosion, Sedimentation, and Pollution.
- 452.236-75 Maximum Workweek—Construction Schedule.
- 452.236-76 Samples and Certificates.
- 452.236-77 Emergency Control.
- 452.236-78 Forest Service Standard Specifications for construction of Roads and Bridges.
- 452.236-79 Opted Timber Sale Road Requirements.
- 452.237-70 Loss, Damage, Destruction or Repair.
- 452.237-71 Pre-Bid/Pre-Proposal Conference.
- 452.237-72 Pre-Bid/Pre-Proposal Conference and Site Visit.
- 452.237-73 Equipment Inspection Visit.
- 452.237-74 Key Personnel.
- 452.237-75 Restrictions Against Disclosure.
- 452.237-76 Progress Reporting.
- 452.237-77 Identification of Contract Deliverables.
- 452.237-78 Contracts with Consulting Firms for Services.
- 452.242-70 Estimated and Allowable Costs.
- 452.245-70 Government-Furnished Property.
- 452.245-71 Government Property—Facilities Use.

452.204-70

- 452.246-70 Inspection and Acceptance.
- 452.247-70 Delivery Location.
- 452.247-71 Marking Deliverables.
- 452.247-72 Packing for Domestic Shipment.
- 452.247-73 Packing for Overseas Shipment.
- 452.252-70 List of Attachments.

AUTHORITY: 5 U.S.C. 301 and 40 U.S.C. 486(c).

Subpart 452.2—Texts of Provisions and Clauses

SOURCE: 53 FR 6069, Feb. 29, 1988, unless otherwise noted.

452.204-70 Data Universal Numbering System.

As prescribed in 404.670, insert the following provision:

DATA UNIVERSAL NUMBERING SYSTEM (DUNS) (FEB 1988)

(a) The offeror is requested to insert the DUNS number applicable to the contractor's address shown on the solicitation form.

DUNS NO. _____

(b) If the production point (point of final assembly) is other than the location entered on the solicitation form, or if additional production points are involved, enter the DUNS number applicable to each production point in the space provided below.

ITEM NO. _____

MANUFACTURER _____

PRODUCTION POINT _____

DUNS NO. _____

(c) If DUNS numbers have not been established for the contractor, or the production point(s) shown above, a number will be assigned upon request by Dun & Bradstreet, Allentown, Pennsylvania, phone (215) 776-4388, 89, 90 or 91.

(End of provision)

452.204-71 Inquiries.

As prescribed in 404.7001, insert a provision substantially as follows:

INQUIRIES (FEB 1988)

Inquiries and all correspondence concerning this solicitation should be submitted in writing to the Contracting Officer. Offerors should contact only the contracting officer issuing the solicitation about any aspect of this requirement prior to contract award.

48 CFR Ch. 4 (10-1-96 Edition)

(End of provision)

452.207-70 Definition of "Right of First Refusal."

As prescribed in 407.305, insert the following clause:

DEFINITION OF "RIGHT OF FIRST REFUSAL" (FEB 1988)

(a) OMB Circular A-76 provides that Contractors will give Federal employees displaced as a result of a conversion to contract the right of first refusal for employment on the contract in positions for which they are qualified and for which the Contractor is hiring. The purpose of this clause is to define the phrase "displaced as a result of the conversion" so that eligibility for the right of first refusal can be determined.

(b) It is the policy of the U.S. Department of Agriculture to extend the right first refusal to any permanent full-time or permanent part-time employee who, as a result of a reduction-in-force notice, is reduced in grade or separated as a direct result of a "conversion" action under OMB Circular A-76. A conversion is defined as "the transfer of work from Government commercial or industrial activity to performance by a private commercial source under contract."

(c) Offers by Contractors made as a result of an employee's right of first refusal will be subject to the terms and conditions of employment set by the Contractor. For example, a permanent part-time employee does not have the right to a part-time tour of duty with the Contractor. Similarly, this policy does not afford an affected Government employee any right to a specific job or salary. Such employment considerations are deemed to be matters solely between the Contractor and the affected Government employee. Employees with the right of first refusal have only the right to an offer of a position for which they are qualified and for which the Contractor is hiring.

(d) Employees who hold any Federal civil service appointment other than permanent (e.g., a temporary appointment) do not have a right of first refusal if displaced as a result of a conversion.

(e) The determination by USDA of an employee's eligibility for the right of first refusal is appealable under the procedures provided in Departmental Regulation (DR) 2170-1. Determinations related to the implementation of OMB Circular A-76 are not subject to any negotiated or agency grievance procedure. Decisions rendered under the agency procedure are final.

(f) The Contracting Officer will provide a successful Contractor with a listing of those employees that USDA has determined are eligible for right of first refusal.